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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,884	02/13/2002	Thomas Scott Dreaper	4246P2434	3614

7590

10/29/2003

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EXAMINER

MARKS, CHRISTINA M

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 10/29/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

CS

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/076,884	DREAPER ET AL.	
	Examiner	Art Unit	
	C. Marks	3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 February 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-134 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-134 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 43, 78, 79, 91, 92, 104 and 105, drawn to a method and system for playing a betting game wherein the player is permitted to bet on a variety of possible poker hands, classified in class 463, subclass 13.
- II. Claims 1-42, 44-77, 80-90, 93-103 and 106-134, drawn to a method and system for playing a betting game wherein the player bets on the value of a card over a median value, classified in class 463, subclass 11.

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as usable together in that one is relating to betting on the poker characteristics of a hand to be dealt and the other is betting on whether the cards will be above or below a median value. These systems therefore have different modes of operation, as it would not be required to bet if the cards are above a certain value when employing a poker-type betting scheme.

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.

Further, invention Group II contains distinct species within the invention itself.

Thus, this application contains claims directed to the following patentably distinct species of the claimed invention in Group II.

- Species A: Game and features of betting on the value of a card in relation to a median value.  
Claims 3-5, 7-10, 20, 46-48, 50-52, 60, 70, 83 and 96 read on Species I.
- Species B: Game of betting on the odd/even characteristics of a card in addition to the relation to a median value. Claims 12, 22-26, 54 and 62-64 read on Species II.

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- Species C: Game of betting on the actual numerical value of a card in addition to the relation to a median value. Claims 15, 28-35, 57, 66-67, 73-74, 77, 86-87, 90, 99-100 and 103 read on Species III.
- Species D: Game of betting wherein a player can choose multiple values and then bets on a value within the chosen values in addition to the relation to a median value. Claims 14, 16, 56, 58, 72, 85 and 98 read on Species IV.
- Species E: Game of betting on whether the cards will be identical in addition to the relation of the cards to a median value. Claims 17-18, 36-40, 75-76, 88-89 and 101-102 read on Species V.
- Species F: Game of betting wherein the player can bet on the color of the cards in addition to the relation to a median value. Claims 41 and 42 read on Species VI.
- Species G: Game of permitting the player to bet that a total numerical card value received by the player be in at least one location of a plurality of vertical rows or total card numbers in addition to the relation to a median value. Claims 107-126 read on Species VII.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Currently, claims 1, 44, 68, 81, 94 and 127-134 are generic.

Claims 2, 6, 45, 49, 80, 93 and 106 link(s) inventions Species A, Species B, Species C, Species E and Species G. The restriction requirement among the linked inventions is subject to the nonallowance of the linking claim(s), claims 2, 6, 45, 49, 80, 93 and 106.

Claims 11 and 53 link(s) invention Species B and Species C. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), claims 11 and 53.

Claims 13 and 55 link(s) invention Species C and Species B. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), claims 13 and 55.

Claims 19, 59, 69, 82 and 95 link(s) invention Species A, Species B, Species C, and Species E. The restriction requirement among the linked inventions is subject to the nonallowance of the linking claim(s), claims 19, 59, 69, 82 and 95.

Claims 21 and 61 link(s) invention Species B and Species E. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), claims 21 and 61.

Claims 27, 65, 71, 84 and 97 link(s) invention Species C and Species E. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), claims 27, 65, 71, 84 and 97.

Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Applicant is advised that a reply to this requirement must include an identification of the invention that is elected consonant with this requirement. In other words, Applicant needs to state the election of either Group I or Group II. Further, if Group II is elected, then an election of species between Species A-G must also be identified. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Due to the complex nature of this restriction, a telephone attempt has not been made because it has been determined a written restriction more readily identifies the issue of restriction at hand.

Applicant is reminded that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Marks whose telephone number is (703)-305-7497. The examiner can normally be reached on Monday - Thursday (7:30AM - 5:30 PM).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa J Walberg can be reached on (703)-308-1327. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.



cmm

October 27, 2003

  
Teresa Walberg  
Supervisory Patent Examiner  
Group 3700